IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR

O R D E R

Shiv Nath Singh Vs. State of Rajasthan & Anr.

S.B.CR.MISC. PETITION NO.1224/2006

DATE OF ORDER :: November 24, 2006

PRESENT

HON'BLE MR.JUSTICE H.R.PANWAR

Mr.Suresh Kumbhat, for the petitioner.

Mr.Ashok Upadhyaya, P.P.

Mr.Jawan Singh for complainant-non-petitioner No.2.

BY THE COURT:

This criminal misc. petition under section 482 Cr.P.C. is directed against the order dt. 9.6.2006 passed by the Sessions Judge, Sirohi (for short 'the revisional court' hereinafter), whereby the revision petition filed by the petitioner against the order dt. 8.8.2005 passed by the Chief Judicial Magistrate, Sirohi (for short 'the trial court' hereinafter), was dismissed.

I have heard learned counsel for the petitioner, Public

Prosecutor for the State and the counsel appearing for the complainant. Carefully gone through the orders passed by both the courts below as also the challan papers.

The complainant, who has been elected as Chairman of Rao Mahasamiti, Sirohi, filed a report alleging therein that while the petitioner was the Chairman of Rao Mahasamiti, Sirohi, he got the boundary wall and pillars constructed and for that construction a sum to the tune of Rs.82230/- was incurred, whereas at the relevant time cost of the construction undertaken as per B.S.R. rate was Rs.59,500/- and, therefore, the petitioner committed the criminal breach of trust for a sum of Rs.32730/-. After thorough investigation, the police filed the negative final report. However, the trial court took the cognizance of offence under section 408 I.P.C. and subsequently, framed the charge under section 408 I.P.C. against the present petitioner. The star witness of the prosecution is Mahendra Singh, a Junior Engineer.

I have carefully gone through the statement of Mahendra Singh recorded by the police under section 161 Cr.P.C. He stated that for the year 1993-96, the BSR rates was approximately Rs.59537/- for the work got done by the petitioner i.e. the boundary wall, pillars etc. however, it depends

on quality of the work and for the said work, approximately a sum of Rs.82,230/- may also be incurred. Thus, from the statement of the witness, it no where appears that he affirmatively stated the cost of the construction was only Rs.59537/-, whereas his statement is totally on the estimation and for the construction of the work, the quality and the material used are the relevant considerations and even according to this witness if the material are of the otherwise, then the expenses could go to Rs.82,230/-. At the relevant time, the complainant himself was the Executive Member of the Rao Mahasamiti and was party to the approval of expenses of Rs.82230/- and was signatory. He did not object that such an amount for the work done has not been incurred while approving the expenses incurred.

Other witness is Mohabbat Singh. He also stated that approximate cost for the construction of the boundary wall, pillar etc. is Rs.82,230/-. From the statements of other witnesses, it appears that at the time of construction of boundary wall and pillars etc. various persons including the complainant were also the parties and the signatories for the approval of the work in question. The report has also been filed by the Project Officer, which is on record showing estimate of construction cost i.e. Rs.1,01000/-. Even if the evidence sought to be produced by the

prosecution remained uncontroverted, in my no conviction of the petitioner for the offence under section 408 I.P.C. can be sustained.

In the circumstances, therefore, if the order framing charge is allowed to stand, it would tantamount to abuse of process of court and, therefore, to secure the ends of justice, the orders impugned passed by the trial court as also by the revisional court deserve to be set aside.

In the result, the petition is allowed. Order dt. 8.8.2005 passed by the Chief Judicial Magistrate, Sirohi and the order dt. 9.6.2006 passed by the Sessions Judge, Sirohi are set aside. The petitioner is discharged of the offence under section 408 I.P.C.

[H.R.PANWAR],J.

m.asif/-